

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION
SECURITIES LITIGATION

This Document Relates To:

MARK NEWBY, *et al.*, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

ENRON CORP., *et al.*

Defendants.

United States Courts
Southern District of Texas
FILED

DEC 09 2003

Michael H. Milby, Clerk

Civil Action No. H-01-3624
(Consolidated)

**FINANCIAL INSTITUTIONS' SUPPLEMENTAL
FILING IN OPPOSITION TO LEAD PLAINTIFF'S MOTION TO COMPEL THE
BANKS TO PRODUCE THE TRANSCRIPTS OF THE SWORN STATEMENTS
OF THEIR CURRENT AND FORMER EMPLOYEES**

The undersigned Financial Institutions¹ respectfully submit this supplemental filing in opposition to Lead Plaintiff's motion to compel the production of transcripts of sworn statements provided to the Enron Corp. Bankruptcy Examiner (the "Examiner") by current and former employees of the Financial Institutions.

Lead Plaintiff's motion to compel is set to be heard by this Court on December 11, 2003 at 2:00 p.m. Prior to Lead Plaintiff filing its motion to compel in this Court, the Financial Institutions filed a motion for a protective order with the bankruptcy court. The Financial Institutions asked Judge Gonzalez for an order barring discovery of the

¹ For purposes of this filing, "Financial Institutions" refers to Bank of America Corporation, Banc of America Securities LLC, Barclays Bank PLC, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC World Markets plc, Credit Suisse First Boston LLC, Lehman Brothers Inc., Lehman Brothers Holdings Inc., Merrill Lynch & Co., Inc., Merrill Lynch, Pierce Fenner & Smith Incorporated.

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transcripts of the sworn statements of their current and/or former employees because the confidentiality orders at issue in the Financial Institutions' motion and the Examiner transcripts were generated under the auspices of the bankruptcy proceeding.

On December 4, 2003, Judge Gonzalez held a hearing on the Financial Institutions' motion for a protective order. For the Court's reference, the transcript of the December 4, 2003 hearing is attached hereto as Exhibit A. The portion of the hearing dedicated to the Financial Institutions' motion is transcribed on pages 7 – 37 of Exhibit A. After hearing from all interested parties, Judge Gonzalez granted the Financial Institutions' motion for a protective order. Exhibit A, p. 35 – 37.

On December 8, 2003, Judge Gonzalez entered a formal order granting the Financial Institutions' motion, and protecting the transcripts of the sworn statements of the Financial Institutions' current and/or former employees from "disclosure in the consolidated private securities litigation known as *Newby v. Enron Corp. et al.*, H-01-CV- 3624 (S.D. Tex.)(Harmon, J.)."² Judge Gonzalez's December 8, 2003 order is attached as Exhibit B.

For the reasons stated in their opposition to Lead Plaintiff's motion to compel and for the reasons stated herein, the Financial Institutions respectfully request that the Court deny Lead Plaintiff's motion to compel.

² Based on statements by Judge Gonzalez during the December 4, 2003 hearing, the Financial Institutions understand that Judge Gonzalez and this Court have discussed the Lead Plaintiff's and Financial Institutions' respective motions related to the Examiner transcripts. Exhibit A, p. 36.

December 9, 2003

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on counsel electronically via the www.esl3624.com website pursuant to the Court's order in *Newby v. Enron Corp. et al.* on this 9th day of December, 2003.

A handwritten signature in black ink, appearing to read 'Odean L. Volker', is written over a horizontal line.

Odean L. Volker

The Exhibit(s) May
Be Viewed in the
Office of the Clerk